UNITED NATIONS

E/NL.1992/3-7
24 April 1992

SPANISH AND ENGLISH ONLY
ORIGINAL: SPANISH

LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

COLOMBIA

Communicated by the Government of Colombia

NOTE BY THE SECRETARIAT

(a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.

(b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

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DECREE No. 1856 OF 18 AUGUST 1989

Adopting measures to restore public order

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA,

in exercise of the powers conferred upon him by article 121 of the Political Constitution and pursuant to Decree No. 1038 of 1984;

WHEREAS:

Under Decree No. 1038 of 1984, 1/ public order was declared to be disrupted and martial law established throughout the national territory;

The aforesaid Decree stated that one of the reasons why public order was declared to be disrupted and martial law established throughout the national territory was the "persistent drug-trafficking activities of antisocial groups that are seriously disturbing the normal functioning of institutions, in criminal contempt for Colombian society, with consequences for the safety of its citizens, public peace and health and the national economy";

Article 110 of the Penal Code, as amended by article 37 of Law No. 2 of 1984, stipulates that "the offence carries with it the forfeiture to the State of the instruments used in its commission and of the property and assets derived therefrom";

In its verdict pronounced on 3 July 1981, the Supreme Court of Justice declared the foregoing provision to be enforceable, stating: "Upon examination of this article 110, which provides for seizure, it will be observed that, as already indicated, it applies to a criminal offence, in other words, an act that has to be treated and defined as such in penal law and, since it refers specifically to a criminal offence, the decision has to be arrived at through litigation involving the passing of a sentence that has been reached by proceedings conducted by appointed judges according to established formalities, all of which falls within the purview not of a Penal Code but rather of a Code of Procedure. It may thus be asserted that the provisions of articles 26 and 28 of the Constitution are not violated and, upon further examination of the matter of seizure, it will be seen that, in addition to what has been said, the rights of the injured party and of third parties are safeguarded, in other words, property or assets belonging to persons unconnected with a punishable offence may not be seized, by virtue of article 30 of the Constitution, which guarantees rights of ownership";

In its verdict of 3 August 1972, whereby a substantially identical provision contained in the Penal Code of 1936 was declared enforceable, the Supreme Court of Justice stated: "To sum up, confiscation as prohibited by the Constitution is the official misappropriation of a person's property carried out, without legal suit or proceeding, by the simple act of impoundment";

With a view to the suppression of drug trafficking, it has become necessary to adopt measures to provide for the seizure, in favour of the Colombian State, of property or assets of any kind directly or indirectly connected with the perpetration of drug-trafficking and related offences or derived therefrom;

The Political Constitution guarantees private ownership and other rights acquired by legal title in conformity with the laws. Consequently, in so far as ownership and other rights are acquired by means of the proceeds from unlawful activities, such as drug trafficking, the aforesaid constitutional guarantee may not extend to include them;

HEREBY DECREES:

ARTICLE 1. While martial law continues to exist, movable and immovable property, stocks, securities, currency, rights of any kind and generally any financial proceeds or assets derived from or directly or indirectly connected with the illicit activities of cultivation, production, storage, keeping, manufacture, processing, sale or supply for any purpose of marijuana, cocaine, morphine, heroin or any other substance producing physical or psychic dependence, or vehicles or other conveyances used for the commission of drug-trafficking or related offences, shall be seized or confiscated by the Military Forces, National Police or State Security Agencies and placed at the immediate disposal of the National Narcotics Control Board, which, by resolution, shall be empowered to assign such property provisionally for official use or for use by lawfully constituted non-profit organizations, pending a ruling by the competent judge as to its ultimate destination.

Any person holding a lawfully proven legitimate right to the property shall have a preferential claim to receive it by way of deposit or under any other title not involving transfer of ownership.

The ruling under which the restitution of seized property is ordered shall be reviewed and become effective only upon its confirmation by a court of superior authority.

PARAGRAPH. In the case of property referred to in this article that is subject to registration of ownership, the judge hearing the case shall notify the persons entered in the register concerned, either personally or by public announcement.

ARTICLE 2. Any money or currency seized under the terms of the foregoing article shall be deposited in a special account at the Bank of the Republic and held at the disposal of the court trying the case.

ARTICLE 3. The judge hearing the case shall immediately notify the interested parties so that their respective rights may be exercised.

ARTICLE 4. Seizure as referred to herein may also apply to other property or rights acquired prior to a conviction and forfeited after the date when such sentence is passed.

ARTICLE 5. It shall be for the party accused of committing a drug-trafficking or related offence to prove that the property seized or forfeited neither derived from an unlawful activity nor was used in the perpetration of the offence.

ARTICLE 6. Any person attempting to acquire property using money derived from drug-trafficking or related offences shall be liable to imprisonment from five to ten years and to a fine of between two thousand (2,000) and five thousand (5,000) times the minimum monthly wage, without prejudice to confiscation of the property concerned.

ARTICLE 7. This Decree shall enter into force on the date of its publication and shall supersede any provisions contrary thereto.

TO BE PUBLISHED AND IMPLEMENTED

Bogotá, 18 August 1989

E/NL.1992/4

DECREE No. 1860 OF 18 AUGUST 1989

Establishing measures to restore public order

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA,

in exercise of the powers conferred upon him by article 121 of the Political Constitution and pursuant to Decree No. 1038 OF 1984;

WHEREAS:

Decree No. 1038 of 1984, 1/ which declared public order to be disrupted and martial law established throughout the territory of the Republic, referred to the "persistent drug-trafficking activities of antisocial groups that are seriously disturbing the normal functioning of institutions, in criminal contempt for Colombian society, with consequences for the safety of its citizens, public peace and health and the national economy", activities and disturbances that are still continuing;

Since, by its very nature, drug trafficking is a criminal activity of international dimensions and effects, in order effectively to combat it there is a need for joint action by the authorities of those countries that are afflicted by this terrible scourge, through the use of the legal device of extradition;

In its ruling of 17 February 1987, the Criminal Cassation Chamber of the Supreme Court of Justice stated that, in the country's legal tradition, the adoption of administrative procedures in matters of extradition had predominated, and for that reason "the involvement of any other branch of the authorities serves no useful purpose", a position consistently adopted in recent rulings pronounced by the aforesaid Criminal Cassation Chamber;

The crime of drug trafficking has assumed new and increasingly dangerous forms that threaten the core of society and jeopardize the institutional stability of the country, thus

calling for special, expeditious and effective legislation to halt its harmful activities and its disastrous consequences for public order;

The legal instruments currently in force do not respond adequately to the need to combat the expansion that this crime has undergone on an international scale;

HEREBY DECREES:

ARTICLE 1. While public order continues to be disrupted and the national territory remains under martial law, the effects of article 17, subsection 2, of the Penal Code shall be suspended in all matters concerned with drug-trafficking and related offences. Consequently, for the purposes of extradition of Colombian nationals or foreigners sought in connection with those offences, the procedure provided for in the Code of Criminal Procedure may be applied, subject to the amendments laid down in this Decree.

ARTICLE 2. The granting of extradition of Colombian nationals or foreigners in connection with drug-trafficking and related offences shall not require any prior pronouncement by the Penal Chamber of the Supreme Court of Justice.

ARTICLE 3. Detained or arrested persons liable to extradition under the terms of this Decree shall be held at the disposal of the Ministry of Justice.

ARTICLE 4. The provisions contained herein shall apply to extraditions in respect of drug-trafficking and related offences for which the requests are received subsequent to the entry into force of this Decree.

ARTICLE 5. In the enforceable decision granting extradition, the Government, comprising the President and the Ministers forming part of the National Narcotics Control Board, may order that the extradited person be handed over immediately to the requesting State even if he was being prosecuted in Colombia for any other offence prior to receipt of the extradition request.

With regard to convicted offenders, the provisions of article 660 of the Code of Criminal Procedure shall apply.

ARTICLE 6. In the cases referred to in this Decree, any person may be extradited even if he is being prosecuted in Colombia for the same crime for which he is being sought, provided that no sentence has been passed.

ARTICLE 7. Persons whose extradition is sought in connection with drug-trafficking or related offences shall not be entitled to the benefit of conditional release or conditional sentencing in respect of any other legal proceedings being conducted in Colombia.

ARTICLE 8. The granting of extradition shall be subject to the following restrictions:

(a) If the drug-trafficking or related offence for which extradition is being requested is punishable by the death penalty under the laws of the requesting State, extradition shall be granted only if the requesting State guarantees that it will not impose such penalty;

(b) In no circumstances shall the extradition of a Colombian national be granted if the requesting State does not fully guarantee that it will not impose a sentence of imprisonment exceeding thirty (30) years;

(c) The requesting State shall further guarantee that the extradited person's human rights will be respected within the context of his punishment in a non-discriminatory manner in relation to convicted offenders in his own country;

(d) Costs incurred for the translation of documents and for the conveyance of the person sought shall be borne by the requesting State.

ARTICLE 9. The Government may pronounce the decision referred to in article 659 of the Code of Criminal Procedure even if the person sought has not been arrested or detained. However, in such event, prior to the pronouncement of such decision, the Ministry of Justice shall summon that person to prepare a defence in the manner laid down in article 378 of the Code of Criminal Procedure.

ARTICLE 10. This Decree shall enter into force on the date of its publication and shall supersede any provisions contrary thereto.

TO BE PUBLISHED AND IMPLEMENTED

Bogotá, 18 August 1989

E/NL.1992/5

DECREE No. 1896 OF 24 AUGUST 1989

Establishing measures to restore public order

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA,

in exercise of the powers conferred upon him by article 121 of the Political Constitution and pursuant to Decree No. 1038 of 1984;

WHEREAS:

Under Decree No. 1038 of 1984, 1/ public order was declared to be disrupted and martial law established throughout the national territory;

One of the reasons why martial law was established was the "persistent drug-trafficking activities of antisocial groups that are seriously disturbing the normal functioning of institutions, in criminal contempt for Colombian society, with consequences for the safety of its citizens, public peace and health and the national economy";

Illicit drug-trafficking activities are being carried out using, among other forms of transport, aircraft, fundamental to which is the use of landing strips, both authorized and unauthorized, a practice that it has become necessary to control;

The exercise of strict control over aircraft will assist primarily in combating the criminal activities of these groups and in suppressing crime, and will consequently contribute towards the restoration of public order;

HEREBY DECREES:

ARTICLE 1. While public order continues to be disrupted and the entire national territory remains under martial law, the Governors, Intendants and Commissioners shall, within fifteen (15) days from entry into force of this Decree, notify the Civil Aviation Administrative Department of the landing strips authorized by the aeronautical authority concerned, and give justification of the desirability of their public use with regard to those landing strips whose continued operation they deem essential.

ARTICLE 2. The reports submitted by the Governors, Intendants and Commissioners shall contain the following information:

1. Name of landing strip;

2. Exact location;

3. Name of owner and operator;

4. Purpose of use;

5. Justification of the desirability of its continued operation.

ARTICLE 3. The Civil Aviation Administrative Department, assisted by the forces of law and order, shall bar the use of those landing strips:

(a) That are not duly authorized by the aeronautical authority concerned;

(b) That have not been reported by the Governor, Intendant or Commissioner, even if they are duly authorized;

(c) That have been reported by the Governors, Intendants or Commissioners but whose operation was not justified by them;

(d) That have been reported by the Governors, Intendants or Commissioners with justification of operation, if such justification was not deemed by the Civil Aviation Administrative Department to be valid.

ARTICLE 4. Whenever the Civil Aviation Administrative Department deems the reopening of a landing strip to be justified, it shall authorize the resumption of its operation.

ARTICLE 5. The Governors, Intendants and Commissioners shall formulate such mechanisms as they deem appropriate for obtaining from the municipal authorities the information

required to comply with the provisions of article 1, and the municipal authorities shall act with due diligence in providing the information concerned.

ARTICLE 6. Any owner or operator using or allowing the use of a landing strip whose operation has been barred by the authorities shall be penalized by cancellation of the licence to operate the landing strip concerned.

ARTICLE 7. The foregoing provisions shall not apply to landing strips operated by the national airline company SATENA. Such landing strips may be used by that company only, even if they have not been reported.

ARTICLE 8. All firms engaged in special airborne agricultural work shall, within a period not exceeding fifteen (15) days from entry into force of this Decree, report to the Civil Aviation Administrative Department those landing strips authorized by the Department that are currently in regular operation and out of operation, and give reasons justifying the operation of the former.

ARTICLE 9. The reports submitted by firms engaged in special airborne agricultural work shall contain the following information:

1. Name of landing strip;

2. Exact location;

3. Name of owner and operator;

4. Current regular use;

5. Justification of its operation.

ARTICLE 10. The Civil Aviation Administrative Department, assisted by the forces of law and order, shall bar the use of those landing strips of firms engaged in special airborne agricultural work:

(a) That are not duly authorized by the aeronautical authority concerned;

(b) That have not been reported by the firms engaged in special airborne agricultural work, even if they are duly authorized;

(c) That have been reported by those firms but whose operation was not justified by them;

(d) That have been reported by those firms with justification of operation, if such justification was not deemed by the Civil Aviation Administrative Department to be valid.

ARTICLE 11. The resumption of a landing strip's operation shall be authorized by the Civil Aviation Administrative Department at the request of its owner or operator, provided that its reopening is deemed by the Department to be justified.

ARTICLE 12. Whilst public order continues to be disrupted and the national territory remains under martial law, all non-regular air carriers and bodies corporate that do not undertake commercial flight operations, whether aircraft owners or operators, shall engage as staff members such aircrews as may be required by them for the operation of their aircraft, and such personnel shall be employed exclusively in the firm's service.

Firms referred to in this article shall comply with the requirement set out herein within thirty (30) calendar days from entry into force of this Decree and shall, within that period, submit to the Civil Aviation Administrative Department a full list of flight personnel, together with authenticated copies of the relevant contracts of employment.

ARTICLE 13. Non-compliance with the stipulations of the foregoing article shall give rise to suspension of the certificate of airworthiness until such time as they are complied with.

ARTICLE 14. All aircraft-fuel distribution firms operating within the national territory shall submit monthly reports of sales per aircraft, which shall be sent to the General Directorate for Airborne Operations of the Civil Aviation Administrative Department within the first fifteen (15) calendar days of the month following that to which the information relates.

ARTICLE 15. The Civil Aviation Administrative Department shall extend the aeronautical communications recording system to all those airports in the country that possess control towers.

ARTICLE 16. The Ministry of National Defence, through the Colombian Air Force, shall improve the national airspace control systems by the use of three-dimensional radar equipment in such a way that the coverage of the service is increased and the existing system is expanded, for which purpose the aforesaid equipment shall be operated jointly by the Colombian Air Force and the Civil Aviation Administrative Department.

ARTICLE 17. This Decree shall enter into force on the date of its publication and shall supersede any provisions contrary thereto.

TO BE PUBLISHED AND IMPLEMENTED

Bogotá, 24 August 1989

E/NL.1992/6

DECREE No. 2105 OF 14 SEPTEMBER 1989

Supplementing Legislative Decree No. 1860 of 1989
concerning measures to restore public order

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA,

in exercise of the powers conferred upon him by article 121 of the Political Constitution and pursuant to Decree No. 1038 of 1984;

WHEREAS:

Under Decree No. 1038 of 1984, 1/ public order was declared to be disrupted and martial law established throughout the national territory;

One of the reasons why public order was declared to be disrupted and martial law established throughout the territory of the Republic was the "persistent drug-trafficking activities of antisocial groups that are seriously disturbing the normal functioning of institutions, in criminal contempt for Colombian society, with consequences for the safety of its citizens, public peace and health and the national economy", activities and disturbances that are still continuing;

Since, by its very nature, drug trafficking is a criminal activity of international dimensions and effects, in order effectively to combat it the national Government had deemed it essential to enact Legislative Decree No. 1860 of 1989, 2/ whereby provision was made for nationals and foreigners sought in connection with drug-trafficking and related offences to be extradited by means of administrative proceedings;

It is necessary to supplement the provisions contained in Legislative Decree No. 1860 of 1989 to ensure the efficient implementation of the procedure set out therein, with a view to making it effective, and to ensure that any legal proceedings arising as a result of administrative decisions taken concerning extradition are afforded the guarantees and safeguards that are essential to the administration of prompt and full justice;

HEREBY DECREES:

ARTICLE 1. While public order continues to be disrupted and the entire national territory remains under martial law, any power of attorney that persons whose detention pending extradition or whose extradition has been ordered may grant for the purpose of lodging an administrative appeal against such measures must, without exception, be presented in person to the judicial authority that is to hear and try the administrative suit to be filed.

If the power of attorney cannot be presented personally because the person granting it is deprived of liberty, then, in that event only, such formality may be conducted before the director of the penal institution or before the nearest authority at the place where the prisoner is detained.

ARTICLE 2. This Decree shall enter into force on the date of its publication and shall supersede any provisions contrary thereto.

TO BE PUBLISHED AND IMPLEMENTED

Bogotá, 14 September 1989

E/NL.1992/7

DECREE No. 2390 OF 20 OCTOBER 1989

Supplementing Legislative Decree No. 1856 of 1989
and establishing further measures to restore public order

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA,

in exercise of the powers conferred upon him by article 121 of the
Political Constitution and pursuant to Decree No. 1038 of 1984;

WHEREAS:

Under Decree No. 1038 of 1984, 1/ public order was declared to be disrupted and martial law established throughout the national territory;

One of the reasons why public order was declared to be disrupted and martial law established throughout the national territory concerned the persistent drug-trafficking activities of antisocial groups that were seriously disturbing the normal functioning of institutions, in criminal contempt for Colombian society, with consequences for the safety of its citizens, public peace and health and the national economy;

Legislative Decree No. 1856 of 1989 3/ provided for the seizure and confiscation of property directly or indirectly connected with or derived from drug-trafficking activities, and it has become necessary to supplement that Legislative Decree in order to cover property connected with offences involving unlawful enrichment and the offence defined in article 6 thereof;

In its verdict No. 69 of 3 October 1989, the Plenary Chamber of the Supreme Court of Justice declared Legislative Decree No. 1856 of 1989 to be wholly enforceable;

Legislative Decree No. 1893 of 1989 laid down the procedure whereby the High Court of Public Order was to determine the ultimate destination of seized or confiscated property, on the basis of the provisions contained in Legislative Decree No. 1856 of the same year;

The aforesaid Legislative Decree No. 1893 of 1989 was declared to be partially unconstitutional by verdict No. 78 of 3 October 1989 pronounced by the Plenary Chamber of the Supreme Court of Justice, inasmuch as it considered that the aforementioned procedure should not be separate from the corresponding proceedings for the trying of drug-trafficking and related offences;

It is therefore necessary to enact provisions to replace those that formed the subject of the pronouncement of unconstitutionality and to correct the deficiency noted by the Supreme Court of Justice so that the procedure for the disposal of seized and confiscated property fully matches the proceedings that are brought against the owners or possessors of such property for drug-trafficking and related offences, offences involving unlawful enrichment and the offence defined in article 6 of Legislative Decree No. 1856 of 1989;

HEREBY DECREES:

ARTICLE 1. While public order continues to be disrupted and the entire national territory remains under martial law, the seizure and confiscation of property directly or indirectly connected with or derived from drug-trafficking and related offences, offences involving unlawful enrichment and the offence defined in article 6 of Legislative Decree No. 1856 of 1989 shall be effected on the basis of the stipulations of that Decree.

ARTICLE 2. Upon carrying out any seizure or confiscation, the Military Forces, National Police or State Security Agencies shall report such measures to the competent judge trying the drug-trafficking or related offence, offence involving unlawful enrichment or offence defined in article 6 of Legislative Decree No. 1856 of 1989, or, in the absence of any proceedings, shall file the corresponding criminal charge on the basis of the facts that gave rise to the carrying out of the aforesaid measures.

ARTICLE 3. Following the seizure or confiscation of property directly or indirectly connected with or derived from drug-trafficking or related offences, offences involving unlawful enrichment or the offence defined in article 6 of Legislative Decree No. 1856 of 1989, the Armed Forces, National Police or State Security Agencies shall draw up an official inventory, which they shall send to the judge trying the offence concerned (with a copy thereof to the National Narcotics Control Board) within the following seventy-two (72) hours.

The National Narcotics Control Board shall decide upon the provisional assignment of the property, subject to the stipulations of this Decree, and the judge hearing the case shall decide upon the definite assignment of the property in accordance with the verdict or sentence terminating the proceedings concerned. In the event of a conviction, the accused shall permanently forfeit ownership of the seized or confiscated property, and, in the event of an acquittal, the restitution of the property shall be ordered.

ARTICLE 4. Third parties alleging ownership of any seized or confiscated property and requesting its restitution shall appear in person, accompanied by legal counsel if they deem it appropriate, before the judge trying the case concerned, within five (5) calendar days of being served with a summons or writ, in order that they may prove ownership of the property, its legitimate origin and the purpose for which it was intended.

When passing judgement in proceedings concerning drug-trafficking or related offences, offences involving unlawful enrichment or the offence defined in article 6 of Legislative Decree No. 1856 of 1989, the judge shall decide upon the ultimate destination of such property. If the lawful nature of the origin and intended purpose of the property is wholly proven, the judge trying the case shall order its restitution, by interlocutory injunction, which shall be reviewed by the court of higher authority.

Failure by third parties to appear within the specified time-limit shall be deemed a serious evidential indication of the illegitimacy of the origin and intended purpose of the property.

ARTICLE 5. Following a conviction for any of the aforementioned offences, the seized or confiscated property shall be assigned, by the National Narcotics Control Board on a provisional basis and by the competent judge on a definite basis, to, inter alia, the entities named below:

1. Immovable rural property: to the National Agrarian Fund;

2. Immovable urban property: to entities linked or attached to the Ministry of Health, the Red Cross, the Civil Defence Authority or other non-profit organizations, subject to the discretion of the National Narcotics Control Board or the competent judge;

3. Motor vehicles, movable property of any kind not specifically intended for any purpose, securities, cash and currency: to the Security Fund of the Jurisidictional Branch or to the Administrative Department of Security (DAS);

4. Aircraft, light aeroplanes and helicopters: to the Ministry of National Defence, the National Police, the Colombian Air Force or the national airline company SATENA, according to the allocation made by the Ministry of National Defence;

5. Firearms and ammunition: to the Ministry of National Defence or to the Administrative Department of Security (DAS);

6. Radio and communications equipment: to the Ministry of National Defence;

7. Livestock and agricultural machinery: to the National Agrarian Fund, destined for assignment to the immovable property concerned;

8. Movable property having an artistic or literary value: to the Colombian Institute of Culture (Colcultura);

9. Vessels and naval, marine or river craft: to the Ministry of National Defence, the Colombian Navy, the General Maritime and Port Authority or SENARC, according to the allocation made by the Ministry of National Defence.

ARTICLE 6. The final assignment of seized or confiscated property made by the judge trying the aforementioned offences may either confirm the provisional assignment effected by the National Narcotics Control Board or modify it, but shall be subject to the provisions of this Decree.

ARTICLE 7. The High Court of Public Order shall immediately refer cases arising in connection with the implementation of Legislative Decree No. 1893 of 1989 to the judges competent to try drug-trafficking and related offences, offences involving unlawful enrichment and the offence defined in article 6 of Legislative Decree No. 1856 of 1989.

In the absence of criminal charges for offences referred to in the foregoing paragraph and if no such charges are filed by the Military Forces, National Police of State Security Agencies, the judges competent to try those offences shall initiate the relevant investigations ex officio and shall, in the event of a conviction, decide upon the ultimate destination of the property.

ARTICLE 8. This Decree shall enter into force on the date of its publication and shall supersede any provisions contrary thereto.

TO BE PUBLISHED AND IMPLEMENTED

Bogotá, 20 October 1989

Notes by the Secretariat

1/ E/NL.1985/69.

2/ E/NL.1992/4.

3/ E/NL.1992/3.